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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/000,381	10/29/2001	Aaron Dew	50R4788	9019

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EXAMINER	
KOSTAK, VICTOR R	

ART UNIT	PAPER NUMBER
2614	

DATE MAILED: 12/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/000,381	DEW ET AL.	
	Examiner	Art Unit	
	Victor R. Kostak	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 August 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-33 and 35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 2, 4--20, 22, 23, 25-33 and 35* is/are rejected.

7)☒ Claim(s) *35* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. Claim 35 is objected to because of the following informalities: because there is no claim 34, claim 35 is not compliant with rule 126 which requires claim numbering to be consecutive. The examiner regrets not pointing this out in the last Office action. Appropriate correction is required.

2. Applicant's arguments filed on 08/17/04 regarding the rejections based on the Williams patent have been fully considered but they are not persuasive, explained as follows.

Applicant's arguments indicate that he fails to appreciate the extent of what Williams does and how his broadly-recited claims read on Williams.

Williams does not establish audio and audio settings based only on user identification, which applicant alleges. As was pointed out in the last Office action, Williams also automatically applies the settings based on access time as he improves on the prior art systems which previously could not (col. 2 lines 3-5. The access time is a time (applicant only recites "time" in base claim 1, and further only "time of day" in claims 10 and 18). Applicant only specifies his time parameter as "date" in just one claim (claim 18), which Williams also discloses (e.g. col. 13 lines 21-23).

Furthermore, the access times and dates disclosed by Williams involve times of day and times of day during certain days (e.g. Sundays, noting col. 13 lines 21-23 again).

Based on these access time, Williams indeed alters a plethora of both video and audio settings which he list, though not exhaustively, and as discussed in the last Office action). When an access time is occurring, the settings determined heuristically (by cumulative profiling) are automatically set, thereby accommodating the user at that time with personally tailored settings.

Applicant adds that room location is not used by Williams to establish settings. Applicant is directed to the rejection of claim 16 presented in the last Office action. There, examiner pointed out that the settings are based on time, not location. Applicant is reminded that base claim 15 requires "*at least one of...*" which the examiner met by referring to time of Williams. Claim 16 only recites that the location is the location within the building. Settings based on location is not required in claim 16.

The rejection based on anticipation accordingly still stands against those claims not amended adequately to circumvent Williams, and is reapplied and/or modified from the last Office action, presented as follows.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> Or (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4, 5, 7, 11-16, 18-20, 22, 23, 25, 26, 28-32 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams et al.

Reviewing Williams (noting particularly Figs. 1, 3 and 5) his system involves automatically establishing at least one setting based on time (e.g. col. 2 lines 12-22 and Fig. 5), which system comprises a TV with monitor 102 and a controller (processor) 104 coupled to the

TV by bus 108, the controller receiving time information and in turn configuring various settings (e.g. col. 5 lines 47-51) including audio volume (line 61), thereby meeting claim 1.

As for claims 12 and 15, the controller configures settings heuristically when it identifies settings and configures and/or adjusts the TV settings in a profile database in a continuous updating procedure (e.g. col. 4 lines 57-65; col. 5 lines 42-51; col. 6 lines 50-52). Identification of watching periods (which directly involve time) is also included for developing the profile for settings establishing (col. 6 line 67 – col. 7 line 1)

As for claim 25, the user initially inputs the various settings as well as informing the receiver the time the programming is involved (e.g. col. 6 line 67 – col. 7 line 1), in developing the profiling database heuristically. The volume meets the "at least one of" audio setting.

Regarding claims 2, 20 and 26, the information is input by the viewer (noting interface 132).

As for claims 4, 22 and 30, the settings can be video-related (e.g. col. 7 lines 22-26).

The settings can also be audio-related (col. 7 lines 22-26 again), thereby meeting claims 5, 23 and 31.

As for claims 7 and 11, contrast and volume are given as examples of settings in the previously identified text.

As for claims 13 and 14, the user initially inputs the settings through interface 132, and the controller processes the settings to alter the heuristics (thereby updating and presumably optimizing the configuration on a continuous basis).

Considering claim 16, the location of the TV is in a building (the settings are based on time, not location).

As for claims 18 and 19, the watching/listening periods (col. 6 line 67 – col. 7 line 1) involve times of day, and dates also meet the a time during settings are monitored and thereafter used for configuration updating based on the time and date of programming (col. 13 lines 4-25).

Regarding claim 28, the controller that does the correlating can be arranged in the TV (col. 17 lines 43-46).

As for claim 29, a set-top box can also be used as the receiver (col. 3 lines 30-33).

As for claim 32, a closed-captioning on/off option is also in the profile (col. 6 lines 61-62).

Addressing claim 35, surround sound is also a setting (col. 6 line 56).

4. Applicant's arguments filed with respect to the rejection of obviousness based on Williams have been fully considered but they are not persuasive, explained as follows..

In response to applicant's argument that there is no suggestion in the references to support an obviousness rejection, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Williams explicitly teaches that the television schedule grid is yet another configurable option (col. 7 lines 37-38), which with the extensive profiling establishing and

updating discussed throughout his disclosure, is a direct suggestion by Williams that the grid menus can be modified.

Furthermore, since Williams also explicitly points out that color can be tailored, and that color is listed specifically only as an example (col. 8 line 21), Williams therefore gives explicit allowances to one of ordinary skill in the art that his modification can be applied to any of various display presentations including program guides (which are menus), and that his settings are not exhaustively listed as he specifics that color is only an example.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6, 24, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams et al.

As for claims 6 and 24, it is noted that since Williams uses menu guides (e.g. col. 11 lines 49-60) including a "star" icon (col. 11 line 66) and mentions color as a setting (as noted above), it would accordingly have been obvious to apply the color settings as so preferred to any display mode, such as the menu color and menu icon arrangements, thereby providing the viewer with as many preferences as possible.

Regarding claim 33, Williams addresses an extensive and various list of audio settings (col. 6 lines 52-63), and the dynamic range would have been obvious to set, particularly in view

of the specific audio settings allowed in the list, to thereby optimize the audible presentations of respective programming.

6. Claims 9, 10, 15-18, 20, 22, 25-27 and 30 are now rejected under 35 U.S.C. 102(e) as being anticipated by Wong.

The system of Wong (noting Fig. 2) automatically establishes at least one of audio and video settings based on time of day (e.g. col. 4 lines 38-45) of a television (col. 8 line 1), thereby meeting claim 10.

As for claims 15, 18 and 22, the settings are done heuristically (e.g. col. 5 lines 51-54; col. 7 lines 63-66).

As for claims 9 and 16, the location of the TV with respect a dwelling is covered by the apparatus being capable of adjusting parameters based on it being used indoors or outdoors (e.g. col. 3 lines 60-63).

Regarding claim 17, geographic location reads on it being used outdoors as opposed to it being used indoors (it is pointed out that specific X/Y positional coordinates, such as are used by GPS systems, is not recited nor required to be interpreted as such).

As for claim 20, the user inputs the time of day by virtue of embedded database C (the third element numerically labeled "1").

As for claims 25 and 30, the television settings are adjusted based on the system's location (e.g. indoors or outdoors), the inputs being ambient sensors (input A) and the different respective sensed inputs are correlated to the settings for appropriate adjustment. Included in the settings is contrast (col. 4 line 41).

Considering claim 26, means for inputting is either of controller 1A and 1C applied to data processor 2.

As for claim 27, the ambient sensor can be considered a wide area source of data since it can detect an area that one of ordinary skill in the art can consider "wide".

7. Claims 1, 5, 10, 11, 13-15, 18, 19, 25, 31, 33 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Dobbs et al.

Dobbs (noting particularly Figs. 1 and 4B) automatically establishes audio settings of a television 24 such as volume based on a time of day (e.g. col. 2 lines 45-50), controlled by inputs to microprocessor 12, thereby meeting claims 1, 5, 10 and 11.

As for claims 13-15, 18, 23, 25 and 31, heuristically determined data are accessed (variable audio equalization circuits: e.g. col. 3 lines 30-35) and are established or adjusted based on manipulable input 14 correlated by the microprocessor with the input time data.

The time also includes date data input by the user (col. 8 lines 45-47), thereby meeting claims 19 and 20.

As for claims 33 and 35, Dobbs controls dynamic range and equalization (col. 5 lines 3-10).

8. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobbs et al.

It would have been obvious to one of ordinary skill in the art to house the microprocessor in the television rather than external thereto for the benefit of keeping the circuitry protected

from potentially negative external effects, such as dust, jarring effects from other objects, or from unintentional disconnection, thereby meeting claim 28.

Dobbs points out that his system can be used in a restaurant or a bar (col. 1 lines 10-12) wherein the automatic adjustment capability is used to accommodate the different crowds based on the dining or drinking times.

The examiner takes Official notice that cable and satellite TV is well known and commonly found in restaurants and bars, and set-top boxes are inherent in non-terrestrial TV. It would have been obvious to one of ordinary skill the art to include such cable or satellite in the system of Dobbs for the benefit of providing the customers with an extended selection of programming typically made available by cable and satellite TV, thereby meting claim 29.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The applicant is apprised of additionally cited references that are also pertinent to the claims.

Both Lee and Fuhrer disclose automatically and heuristically adjusting video settings based on the location of the TV (e.g. in a dark room or a bright room)

Kreynin adjusts video and audio settings (i.e. displayed video and presented audio messages) based on the TV location and time of day, the messages being determined heuristically.

Shibamiya automatically adjusts the video and audio settings based on which room the TV is in, by transferring settings from a TV from another room.

10. Claims 3, 21 and 24 appear allowable over the prior art.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor R. Kostak whose telephone number is 703 305-4374. The examiner can normally be reached on Monday - Friday from 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 703 305-4795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this final action should be mailed to:

Box AF
Commissioner of Patents and Trademarks
Washington, D.C. 20231

Or faxed to:

(703) 872-9306 (for Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA., Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 308-HELP.

Victor R. Kostak
Primary Examiner
Art Unit 2614

VRK